

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: May 8, 2019
Hearing Time: 10:00 AM

In Re:

Anthony Agostinelli,

Chapter 13

Case Number 18-22941-rdd

Debtor.

**MOTION FOR APPROVAL OF LIQUIDATION AND/OR USE OF PERSONAL
PROPERTY TO FUND FILED CHAPTER 13 PLAN**

COME NOW, the above named Debtor, by and through his attorney of record, Natasha Meruelo, Esq., an attorney duly licensed to practice law within the State of New York and before the United States District Courts for the Southern District of New York, and respectfully moves this Court for an order pursuant to §363 and §1325 of the Bankruptcy Code, permitting the Debtor to use exempt personal property set forth in his bankruptcy schedules to fund his proposed Chapter 13 plan (“Motion”) as set forth below, and in support hereof alleges and says as follows:

1. That I am the attorney of record for the Debtor in the above-referenced matter and, as such, I am familiar with all of the prior proceedings had herein.
2. On or about June 19, 2018, the Debtor filed a Voluntary Petition for Relief under Chapter 13 of the Bankruptcy Code before this Court, which was assigned Case No.: 18-22941-rdd.
3. The Debtor filed his initial Chapter 13 Plan on or about June 19, 2018 (ECF No. 4).
4. The Debtor filed an amended Chapter 13 Plan on or about April 10, 2019 (ECF No. 13) (“Plan”). See **Exhibit A**.
5. The Plan is scheduled for a confirmation hearing on May 8, 2019.
6. The Debtor’s Plan proposes to make monthly payments and lump sum payments as follows:

- i. 9 payments of \$400.00;
- ii. 51 payments of \$1,400;
- iii. \$50,000 lump sum payment on or about month 12 (from Debtor's retirement savings);
and
- iv. \$38,000 lump sum payment on or about month 60 from anticipated amounts owed on an SSDI claim/benefit backpay.

7. In order to fund his Plan as proposed, the Debtor is seeking permission through this Motion to liquidate his retirement savings (Deferred Salary Plan of the Electrical Industry) to make the first lump sum payment of \$50,000.00 or in the alternative fund his Plan from a combination exempt personal property and savings from various pre-petition and post-petition exempt sources.

8. Per the Amended Schedules A/B and C filed by the Debtor on April 10, 2019 (See ECF No. 12), the Debtor has sufficient funds in his Deferred Salary Plan to make the proposed lump sum payments and has claimed this retirement accounts as fully exempt pursuant to 11 U.S.C. § 522(d)(12) and/or 11 U.S.C. § 522(d)(10)(E) in Schedule C (See ECF No. 12). In the event he cannot take a withdrawal of that size, the Debtor has savings from a combination of pre-petition retirement savings distributions, a workers compensation award and post-petition social security disability retroactive benefit award, with which to supplement a withdrawal from his Deferred Salary Plan.

9. The Debtor has a reasonable need for the use of the personal property requested herein and avers that the requested use of personal property is also a reasonable exercise of his business judgment. Accordingly, the Debtor is moving this Court for approval of the liquidation of the

above described personal property in order to fund his Chapter 13 Plan, in an amount sufficient to net \$50,000.00 as proposed in his Plan and to also cover any costs or fees required to be paid in order to effectuate this contemplated use.

WHEREFORE, the Debtor respectfully requests that this Court enter an order, in the form attached hereto as **Exhibit B**:

1. Granting this Motion and allowing the Debtor to liquidate his personal property as proposed herein; and
2. For such other and additional relief as to the Court may seem just and proper.

Dated: April 15, 2019



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